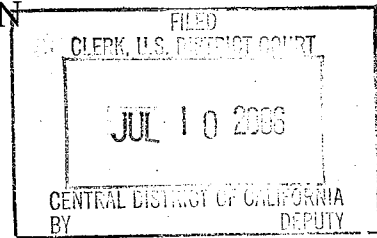


1 DAVID ACEVEDO, *pro hac vice*  
2 MICHAEL R. BERLOWITZ, *pro hac vice*  
3 COMMODITY FUTURES TRADING COMMISSION  
4 140 Broadway, 19<sup>th</sup> Floor  
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9 Attorneys for Plaintiff  
10 Commodity Futures Trading Commission

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

13 COMMODITY FUTURES TRADING ) Case No. CV -03-0833 DSF (Mcx)  
14 COMMISSION, )  
15 ) PLAINTIFF'S RESPONSES TO  
16 Plaintiff, ) ISSUES PROPOUNDED BY THE  
17 ) COURT IN ITS ORDER  
18 vs. ) CONTINUING MOTION FOR A  
19 ) PROPOSED DISTRIBUTION  
20 BEN OUYANG, et al., ) PLAN, DATED JUNE 14, 2006  
21 )  
22 Defendants. ) DATE: July 17, 2006  
TIME: 1:30 p.m.  
COURT: Courtroom of the Hon. Dale  
S. Fischer

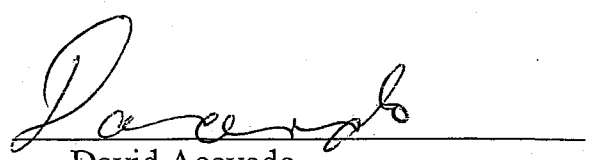
23 TO: DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD,

24 The Court has propounded six issues in its Order Continuing Motion for a  
25 Proposed Distribution Plan, dated June 14, 2006 ("Order"). Plaintiff Commodity  
26 Futures Trading Commission ("CFTC") respectfully submits the following

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responses to the Order, and in further support of its Motion for a Proposed  
Distribution Plan ("Motion").

Dated: July 7, 2006



David Acevedo  
Attorney for Plaintiff  
Commodity Futures Trading Commission

I.

ISSUES AND RESPONSES

Issue 1: Francisco Yanez

The Issue

The Court poses two questions with respect to Plaintiff's evaluation of the claim submitted by Francisco Yanez: (i) what documents did Plaintiff receive pertaining to Mr. Yanez, and (ii) what is the basis for the Plaintiff's statement that there are no other claimants in Mr. Yanez's position?

Plaintiff's Response

(i) In response to our solicitation of written claims from former Victco Financial Services, Inc. customers, Plaintiff received an unsigned claim form from Mr. Yanez<sup>1</sup>, and the following documents:

- A letter, dated October 29, 2005, addressed to CFTC attorney John Wise regarding Yanez's efforts to recoup documents from his former attorney supporting Yanez's losses;
- A copy of a letter, dated June 6, 2005, from The State Bar of California to Yanez regarding its discipline of Yanez's former

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<sup>1</sup> Mr. Yanez did not sign, or date, the claim form certifying that the statements therein are true under penalty of perjury.

1 attorney James C. Regan;

- 2 • A copy of a letter, dated September 11, 2003, from Mr. Yanez,  
3 regarding his complaint against the law offices of James C.  
4 Regan;

- 5 • Bank of America Cashier's Check No. 0179987, in the amount  
6 of \$2,500.00, paid to the order of Victco Financial Service,  
7 Inc., "Remitted by Martha Esparza;"

- 8 • El Paso Area Teachers Federal Credit Union check, No.  
9 571615, in the amount of \$1,500.00, paid to the order of Victco  
10 Financial Services, Inc., "RE: Francisco Martinez;"

- 11 • El Paso Area Teachers Federal Credit Union check, No.  
12 571616, in the amount of \$1,000.00, paid to the order of Victco  
13 Financial Services, Inc., "RE: Teresa Del Castillo;"

- 14 • El Paso Area Teachers Federal Credit Union check, No.  
15 571614, in the amount of \$2,500.00, paid to the order of Victco  
16 Financial Services, Inc., "RE: Maria Martinez;"

- 17 • A Chase Official Check, No. 142858696, in the amount of  
18 \$2,500.00, paid to the Order of Victco Financial Service, Inc.,  
19 "Remitter Juan Gerardo Vargas;"

- 20 • Bank of the West Cashier's Check, No. 142043, in the amount  
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1 of \$2,500.00, paid to the order of Victco Financial Service,  
2 Inc., "Remitter Guadalupe C. Bebenek;"

- 3 • Vernon Commerce Credit Union Check, No. 227109, paid to  
4 the order of Victco Financial Service Inc., "REF/ Francisco  
5 Yanez;"
- 6 • Vernon Commerce Credit Union Check, No. 226022, in the  
7 amount of \$1,800.00, paid to the order of Victco Financial  
8 Service, "REF: Francisco Yanez;"
- 9 • Bank of America Cashier's Check, No. 2011205229, in the  
10 amount of \$2,000.00, paid to the order of Victco Financial  
11 Service, Inc., "Purchaser: Zulema Cervantes;"
- 12 • El Paso Employees Federal Credit Union Check, No. 1108784,  
13 in the amount of \$1,000.00, paid to the order of Victco  
14 Financial Service, "Remitted By Martha E Paredes;"
- 15 • El Paso Employees Federal Credit Union Check, No. 1108724,  
16 in the amount of \$2,500.00, paid to the order of Victco  
17 Financial Services, "Remitted By Mario Valles;"
- 18 • Vernon Commerce Credit Union Cashier's Check, No. 004631,  
19 in the amount of \$5,000.00, paid to the order of Victo [sic]  
20 Financial Service, "Remitter: Arturo Yanez;"  
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- El Paso Employees Federal Credit Union Check, No. 574639, in the amount of \$1,000.00, paid to the order of Victco, “Re: Maria R. Martinez;”
- Bank of America Cashier’s Check, No. 0227723, in the amount of \$5,000.00, paid to the order of Victco Financial Service, Inc., “Remitter Hector Esparza;”
- A Vernon Commerce Credit Union Wire Transfer Instruction Form, dated 5/8/02, from Francisco Yanez in the amount of \$15,000.00 to National Westminster Bank, Milton Keynes, MK9, U.K., for credit to the account of IBF Capital Limited. The form also contains the line, “Reference Or further credit to: ACC# 2785 Francisco Yanez;”
- A Vernon Commerce Credit Union Wire Transfer Instruction Form, dated 6-4-02, from Francisco Yanez in the amount of \$15,000.00 to National Westminster Bank, Milton Keynes, MK9, U.K., for credit to the account of IBF Capital Limited. The form also contains the line, “Reference Or further credit to: ACC# 2785 Francisco Yanez;”
- A one page account statement for Lidia and Francisco Yanez from Vernon Commerce Credit Union;

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- Victco Financial Service, Inc. Check, No. 1608, in the amount of \$476.93, paid to the order of Francisco Yanez;
- Victco Financial Service, Inc. Check, No. 1610, in the amount of \$6,650.00, paid to the order of Francisco Yanez;
- A copy of a letter from Ben Ouyang to Francisco Yanez on Victco Financial Service, Inc., letterhead stating, in part, “Please be advised that you will hold yourself responsible and liable for any misrepresentations that you or your agents made concerning Victco or our affiliates;”
- A three page document entitled Confirmation/Statement of Account for customer Yanez, Account ID 2785 at IBF Capital Limited, Milton Keynes, MK9 2EA, U.K, Beginning Date, 15.07.2002 1700 EST, and Ending Date 16.07.2002 16:59 EST.;
- A two page document entitled Confirmation/Statement of Account for customer Yanez, Account ID 2785 at IBF Capital Limited, Milton Keynes, MK9 2EA, U.K, Beginning Date, 01.10.2002 1700 EST, and Ending Date 02.10.2002 16:59 EST.

Additionally, Plaintiff has reviewed the Victco Bank of America records and the IBF Capital Limited Universal Bank records it previously subpoenaed. In his

1 claims submission, and included above, Mr. Yanez accounts for two checks issued  
2 by Victco to Yanez, drawn from its Bank of America account, totaling \$7,126.93.  
3 But, in his claims submission, Mr. Yanez fails to include an additional four  
4 checks, totaling \$17,523.00, paid by Victco to Mr. Yanez from its Bank of  
5 America account and a wire for \$7,000.00 to Yanez from IBF Capital Limited's  
6 Universal Bank account.

7 (ii) The basis for Plaintiff's statement that there are no other claimants in  
8 Yanez's position is simply that Plaintiff's investigation and litigation of this matter  
9 has not revealed evidence of other claimants in Yanez's position.

## 10 **Issue 2: Pong Re Shin and Young Hee Kim**

### 11 The Issue

12 Why were the net amounts claimed by claimants Pong Re Shin and Young  
13 Hee Kim reduced by the amount of "funds invested in IB Funds Inc?"

### 14 Plaintiff's Response

15 Plaintiff did not sue IB Funds, Inc. Accordingly, Plaintiff has excluded  
16 from its proposed distribution plan all claims arising from funds invested with IB  
17 Funds, Inc.<sup>2</sup>  
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<sup>2</sup> IB Funds, Inc., should not to be confused with IBF Capital Limited, a d/b/a for defendant Yuen  
22 Kwong "Anthony" Wong, against whom this Court entered a default judgment on March 8,  
2004.



1 **Issue 3: Guillermina Reyes**

2 The Issue

3 Explain the following statement (appearing as a comment to the entry for  
4 claimant Guillermina Reyes, number 41 on Exhibit B to the Motion): “Reduce  
5 claim by (\$6,972.62) – not a deposit but account balance as of 10/1/02 of Fain  
6 [sic] Capital Inc. broker statement.”

7 Plaintiff’s Response

8 As part of her claim against Victco and Ouyang, Ms. Reyes claimed  
9 \$6,972.62 as a deposit she made with Gain Capital. In fact, this amount represents  
10 an account balance as of September 30, 2002 in her Gain Capital account. Her  
11 initial deposit of \$5,000.00 was made on March 7, 2002. Ms. Reyes claimed  
12 withdrawals from that account totaling \$3,819.91. Thus, her net allowable claim –  
13 in this instance, is the difference between her total deposits (\$5,000.00) and her  
14 total withdrawals (\$3,819.91), which totals \$1,180.09.

15 **Issue 4: Silvia Chavez and Carlos and Nelly Santos**

16 The Issue

17 Are the claims of Silvia Chavez and of Carlos and Nelly Santos duplicative?  
18

19 Plaintiff’s Response

20 These claims are not duplicative. Exhibit C to the Motion lists Customer #6  
21

1 as Chavez, Silvia/Santos, Nelly, which gives the erroneous impression that this  
2 was a joint account. Ms. Chavez and Ms. Santos did not in fact maintain a joint  
3 account. During the relevant time period they did reside at the same address and  
4 Ms. Chavez's claim was received by Plaintiff in an envelope showing both names  
5 on the return address. However, the account referred to in #6 on Exhibit C relates  
6 only to an account opened and maintained exclusively in the name of Sylvia  
7 Chavez.

8 **Issue 5: Maria Luna and Mayra Luna**

9 The Issue

10 Are the claims of Maria Luna and Mayra Luna duplicative, or identical?

11 Plaintiff's Response

12  
13 These claims are neither duplicative, nor identical. Ms. Maria Luna and Ms.  
14 Mayra Luna are different individuals who reside in different states and who  
15 opened separate accounts on different dates.

16 **Issue 6: James Zhiquian Huang**

17 The Issue

18 Claimant James Zhiquian Huang filed a claim for \$40,000, but his net  
19 allowable claim has been reduced to \$0 because he received a withdrawal of  
20 \$71,330.50. Why did he receive that withdrawal? Did he invest more than  
21 \$40,000 and if so, might he still be owed some or all of the \$40,000 he claimed?

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Plaintiff's Response

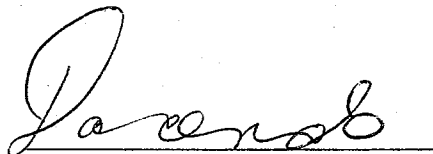
Mr. Huang submitted documentation for the deposit of \$40,000 with Victco. Victco's Bank of America records show a transfer of \$71,330.50 to Mr. Huang. But, Mr. Huang did not submit documentation reflecting that he had received \$71,330.50 from Bank of America.

In evaluating Mr. Huang's claim Plaintiff has concluded that, due to the timing of his withdrawal request, Mr. Huang was able to profit from his investment due to trading gains in his account. Because Plaintiff has not named Mr. Huang as a relief defendant, he is free to keep those gains. Plaintiff has not discovered evidence of, nor has Mr. Huang claimed, any investment with Victco other than the initial \$40,000.

**II.**  
**CONCLUSION**

Plaintiff respectfully requests that the Court issue an order approving the Motion.

Respectfully submitted,



David Acevedo  
Attorney for Plaintiff  
Commodity Futures Trading Commission

Dated: July 7, 2006

1 PROOF OF SERVICE

2 I certify and declare that I am over the age of 18 years, not a party to the above-  
3 entitled action, and employed by U.S. Commodity Futures Trading Commission,  
4 Division of Enforcement, 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005. On  
5 July 7, 2006 I served a true copy of

6 PLAINTIFF'S RESPONSES TO ISSUES PROPOUNDED BY THE COURT  
7 WITH RESPECT TO PLAINTIFF'S MOTION FOR A PROPOSED  
8 DISTRIBUTION PLAN

9 by depositing it with the United States Postal Service in a sealed envelope with the  
10 postage thereon fully prepaid to:

11 Hank Vanderkam, Esq.  
12 Vanderkam & Associates  
13 1301 Travis  
14 Houston, TX 77002

15 I declare under penalty of perjury under the laws of the United States of  
16 America that the foregoing is true and correct.

17 Executed on July 7, 2006 at New York, New York.

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Angela Mely